

CAUSE NO. DC-15-04942

Freeney Anita

CYNTHIA WARE,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF DALLAS COUNTY, TEXAS
	§	
WELLS FARGO BANK, N.A.,	§	
	§	
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

I.

INTRODUCTION

Plaintiff files this Original Petition against Defendant and respectfully alleges the following.

II.

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 1 of Texas Rule of Civil Procedure 190.2.

III.

PARTIES

2. Plaintiff is an individual and a citizen of Dallas County, Texas.

3. Defendant, Wells Fargo Bank, N.A., is a foreign corporation organized under the laws of the state of California, with a permit to do business in the state of Texas. Defendant may be served with process, including citation and a copy of this petition, by serving its registered agent for service of process, Corporation Service Company, D/B/A CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

IV.

JURISDICTION

4. The Court has jurisdiction over this action because the amount in controversy is within the jurisdictional limits of the Court, **but does not exceed \$74,000.00, exclusive of interest and costs. Plaintiff affirmatively limits her potential recovery accordingly.**

V.

VENUE

5. Venue is proper in Dallas County because all or a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in Dallas County.¹

VI.

BACKGROUND FACTS

6. Defendant hired Plaintiff as a Consumer Loan Underwriter.
7. Plaintiff was diagnosed with cancer and required surgery.
8. After surgery, Plaintiff had complications that required her to take disability leave.
9. On or about August 21, 2013, while on leave, Plaintiff was told she was being laid off due to "downsizing."
10. The layoff was effective on October 19, 2013.
11. Less qualified non-disabled persons were not laid off.
12. Defendant already started interviewing to fill Plaintiff's position shortly after she was terminated.

¹ TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

VII.

CONDITIONS PRECEDENT

13. Plaintiff filed the attached Charge of Discrimination with the Equal Employment Opportunity Commission, and this Charge was dual filed with the Texas Workforce Commission pursuant to those agencies' work sharing agreement.

14. The Charge was filed within 180 days after Plaintiff was terminated.

15. More than 180 days have passed since the Charge was filed.

16. Plaintiff has timely exhausted all of her administrative remedies.

VIII.

CAUSES OF ACTION

A. First Cause of Action—Wrongful Termination—Disability Discrimination—TCHRA²

17. Plaintiff incorporates each of the foregoing paragraphs.

18. Defendant terminated Plaintiff's employment because of Plaintiff's disability and/or perceived disability and/or record of a disability and/or because it regarded Plaintiff as disabled.

19. Defendant's actions violated section 21.051 of the Texas Labor Code.

² Texas Commission on Human Rights Act.

IX.

DAMAGES

20. Plaintiff incorporates each of the foregoing paragraphs.

21. Defendant's actions violated the TCHRA, which entitles Plaintiff to recover from Defendant back pay, front pay, compensatory damages, as well as pre-judgment and post-judgment interest.

22. Because Defendant's actions were done with malice and/or reckless indifference to Plaintiff's state-protected rights, Plaintiff is entitled to recover from Defendant punitive damages.

23. Plaintiff seeks all damages available to her under the TCHRA; **provided, Plaintiff seeks a final judgment, exclusive of interest and costs, not to exceed \$74,000.00.**

X.

ATTORNEYS' FEES AND COSTS

24. Plaintiff incorporates each of the foregoing paragraphs.

25. Plaintiff retained the services of undersigned counsel to prosecute her claims.

26. Pursuant to Texas Labor Code section 21.259, Plaintiff is entitled to recover a reasonable attorneys' fee from Defendant including reasonable expert fees; **provided, Plaintiff seeks a final judgment, exclusive of interest and costs, not to exceed \$74,000.00.**

XI.

INJUNCTIVE AND DECLARATORY RELIEF

27. Plaintiff incorporates each of the foregoing paragraphs.
28. Plaintiff requests the Court enter an order providing injunctive and declaratory relief including, but not limited to:
- a. Prohibiting Defendant from engaging in unlawful discrimination;
 - b. Reinstating Plaintiff's employment with Defendant with back pay;
 - c. Reporting to the Court on the manner of compliance with the terms of a final order issued by this Court;
 - d. Paying court costs;
 - e. A declaration that Defendant violated Plaintiff's rights under Chapter 21 of the Texas Labor Code, engaged in unlawful employment discrimination, and considered an illegal factor in terminating Plaintiff's employment; and
 - f. Any additional equitable relief as the Court deems proper.

XII.

JURY DEMAND

29. Plaintiff demands a trial by jury.

XIII.

PRAYER

30. Plaintiff respectfully requests that Defendant be cited to appear and answer, and that upon final trial of this matter, the Court enter judgment, **not to exceed \$74,000.00, exclusive of interest and costs**, awarding Plaintiff:

- A. Back pay and front pay (including benefits);
- B. Compensatory damages;
- C. Punitive damages;
- D. Reasonable attorneys' fees and expert fees;
- E. Injunctive and declaratory relief, including but not limited to, an Order:
 - a. Prohibiting Defendant from engaging in unlawful discrimination;
 - b. Reinstating Plaintiff's employment with Defendant with back pay;
 - c. Reporting to the Court on the manner of compliance with the terms of a final order issued by this Court;
 - d. Paying court costs;
 - e. A declaration that Defendant violated Plaintiff's rights under Chapter 21 of the Texas Labor Code, engaged in unlawful employment discrimination, and considered an illegal factor in terminating Plaintiff's employment; and
 - f. Any additional equitable relief the Court deems proper;
- F. Courts costs;
- G. Pre-judgment and post-judgment interest at the rate set by law; and
- H. All legal or equitable relief this Court deems proper.

Respectfully submitted,



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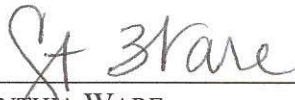
ATTORNEYS FOR PLAINTIFF

DECLARATION OF CYNTHIA WARE

1. My name is Cynthia Ware.
2. My date of birth is August 25, 1963.
3. My home address is 1520 N. Beckley Avenue, Apt. 1312, Dallas, Texas 75203.
4. I am of legal age and of sound mind and have personal knowledge of the facts set for in this Declaration.
5. I am duly authorized to make this Declaration and am competent to testify to the matters contained in this Declaration.
6. I swear that every statement made in this Declaration is made on my personal knowledge and is true and correct.
7. I am the named Plaintiff in this lawsuit.
8. In my Original Petition, which will be filed in state court, I specifically state I am limiting the amount of my recovery, and the amount of any judgment, to \$74,000.00, exclusive of interest and costs.
9. I know that the claims and causes of action I brought could afford me greater relief than \$74,000.00, but I intentionally agreed to limit my recovery to \$74,000.00 nonetheless, exclusive of interest and costs.
10. I do not seek, I will not seek, and I will not accept, a final judgment in excess of \$74,000.00, exclusive of interest and costs.
11. A final judgment of \$74,000.00, exclusive of interest and costs, would make me whole for the damages I suffered as alleged in my Original Petition.
12. I fully intend to be bound by these stated limitations.

I swear and declare under penalty of perjury that the foregoing is true and correct and based on my personal knowledge.

Executed in Dallas County, Texas, on the 24th day of April, 2015.



CYNTHIA WARE

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA
☒ EEOC

Texas Workforce Commission, Civil Rights Division

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Ms. Cynthia G. Ware

Home Phone (Incl. Area Code)

682-201-4463

Date of Birth

8/25/1963

Street Address

City, State and ZIP Code

6008 Maple Avenue #403

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

Wells Fargo Home Mortgage

No. Employees, Members

500+

Phone No. (Include Area Code)

877-479-3557

Street Address

City, State and ZIP Code

250 E. John Carpenter Freeway, 3rd Floor, Irving, Texas 75062

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☒ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

8/21/2013**10/19/2013**☐

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Personal Harm:

I was hired as a Consumer Loan Underwriter on February 18, 2013. I suffer from cancer and required surgery. After surgery, I had complications requiring me to take disability leave. I was informed on August 21, 2013, while on leave, that I was being laid off due to "downsizing." The layoff becomes effective on October 19, 2013. Myself and several others with disabilities were included in the layoff; however, employees who were less qualified were not laid off. Also, the company has already started interviewing to fill the position I previously held.

Respondent's Reason for Adverse Action:

None.

Discrimination Statement:

I believe I have been discriminated against because of my disability or perceived disability, in violation of the Americans With Disabilities Act and the Texas Commission on Human Rights Act (TCHRA). I believe that I was retaliated against in violation of the ADA and the TCHRA.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

Brittney Lynne Gribble

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Cynthia G. Ware

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

(month, day, year)

10/18/13

Date

Charging Party Signature



BRITTNEY LYNNE GRIBBLE
My Commission Expires
December 12, 2014